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Should COVID-19 Empower Strata Corporations to Ban Non-Residents?

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Should COVID-19 empower strata corporations to ban non-residents?

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Stories are appearing of condominium developments that have banned non-residents in response to the COVID-19 pandemic.

In doing so, they are following governments in Canada at many levels, including national, provincial, and Indigenous, that have prohibited non-residents who are not essential service workers from entering their jurisdictions.

Do condominium corporations have the legal authority to ban non-residents? Should they?

In British Columbia, the answer to the first question appears to be yes, strata corporations do have the power to ban non-residents.

The basis for this power lies in the province's condominium legislation—the *Strata Property Act*. It creates a form of land ownership that combines private rights to individual units with shares of the common property in multi-unit developments, and democratic rights to participate in the governing body.

Owners are shareholders in a strata corporation, which is responsible for managing the common property, including entrance, lobby, elevators, stairwells, and hallways. These are the common areas that a strata corporation might close to non-residents during the COVID-19 pandemic with a bylaw or rule.

New bylaws require the approval of 75 per cent of owners, but a strata corporation can implement rules, which apply only to common property, immediately and then seek confirmation from the owners at the next general meeting with a 50 per cent vote in favour.

Rules that make a significant change in the use of common property, such as a proposed non-resident ban, require a 75 per cent vote, unless “there are reasonable grounds to believe that immediate change is necessary to ensure safety.”

The COVID-19 pandemic would appear to provide the grounds for imposing such a rule immediately, but even if it did not, a strata corporation could implement a “non-residents prohibited” rule or bylaw with a 75 per cent vote of the owners.

Should strata corporations have this power?

Any such rule would need to include a provision exempting essential service workers and this would create practical difficulties, not least of which would be delegating the power to determine what services are essential and then to enforce the ban.

However, beyond the practical difficulties, there are at least three reasons for caution.

First, the capacity of residents, whether owners or tenants, to determine who has access to their homes is fundamental to our understanding of home. A rule that prohibits residents from inviting anyone into their homes, and further, that would restrict those who might come to the threshold of their homes, including delivery people, significantly diminishes the meaning of home.

Second, condominium government is private government. Only owners have voting rights. Courts have used this private status as the basis for exempting condominium government from the oversight of the *Charter of Rights and Freedoms*, which governs the actions of public governments. As a result, the decision of a provincial government to ban non-residents would be interrogated against the freedom of mobility provisions in the *Charter*, but the decision of a condominium government would not.

Finally, if limiting the capacity of residents to determine who may have access to their homes is a necessary response to the COVID-19 pandemic, then that power should be exercised by public government. The pandemic is a public health crisis that requires modifications in private behaviour, but not the expansion of private government.

Governments should be vigilant about non-resident bans in condominium buildings. To allow them is not only to diminish the meaning of home, but also to misallocate power to private government in a context—a borderless pandemic—that demands public responses.

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